



**U.S. House of Representatives**  
**Committee on Transportation and Infrastructure**  
**Washington, DC 20515**

**Don Young**  
**Chairman**

**James L. Oberstar**  
**Ranking Democratic Member**

March 7, 2002

Lloyd A. Jones, Chief of Staff  
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The President  
The White House  
Washington, D.C. 20500

Dear Mr. President:

We have reviewed the February 25, 2002 press briefing transcript of your press secretary, Mr. Ari Fleischer, on the subject of Superfund and its financing. His remarks raise serious concerns about your Administration's commitment to the cleanup of the Nation's most hazardous toxic waste sites listed pursuant to the Superfund program. The questions posed to Mr. Fleischer addressed recent press reports in the *New York Times* and elsewhere about the recent shift of costs of the Superfund program from the oil, gas, and chemical industries to the general taxpayer, and the slowdown in the pace of cleanup of the Nation's most hazardous waste sites.

We do not believe that Mr. Fleischer ever answered the questions asked and we write to pose the same question: "How do you propose to fund the Superfund program in fiscal year 2004 and beyond?" For the last two decades, the answer to the question has been that "the polluter pays". Under your Administration, the answer to the question of who should pay for these contaminated sites no longer appears clear.

Under the Superfund law and the principle of "the polluter pays", the party or parties responsible for the contamination of a hazardous waste site pay for the cost of cleaning up the contaminated site. For those sites where no responsible party could be found or the party is unable to pay, the cleanup is paid from the Superfund Trust Fund. The 1980 Superfund law imposed a tax on the oil, gas, and chemical industries to finance the Superfund Trust Fund. As part of the legislation, the law also relieved the oil industry of most of its liability for petroleum contamination of Superfund sites. In 1995, the taxes lapsed and, over the last several years, Congress has funded the program by a combination of drawing down the remaining balance in the Trust Fund and providing some general funds.

Your budget proposal indicates that the Superfund Trust Fund will be virtually exhausted at the end of fiscal year 2003. Moreover, unlike each prior Administration that has addressed this issue since 1980, your budget proposal specifically states that it does not propose reauthorization of Superfund taxes, and Mr. Fleischer was extremely noncommittal about future funding sources for the program. What is clear is that the failure to reinstate the Superfund taxes will result in a transfer of the costs of the Superfund program from industry to the taxpayer.

The failure to reinstate the Superfund taxes provides a continuing \$4 million-a-day tax break to the oil, gas, and chemical industries and the business community. The total tax break is now more than \$8.75 billion, and the meter is running. This failure to reinstate the taxes not only creates a windfall for polluters, it shifts the costs of Superfund to the individual taxpayer. Since the taxes expired in 1995, the general taxpayer has already paid nearly \$2 billion more than he should have to operate the Superfund program -- \$2 billion over five years from the taxpayer just so the oil, gas, and chemical industries and other businesses can benefit from a \$4 million-a-day tax break.

Concurrent with the exhaustion of the Superfund trust fund, the budget proposes to reduce the number of site cleanup construction completions by one-half. After averaging more than 75 cleanup completions a year from 1992 through 2000, your budget projects that only 40 Superfund cleanups will be completed in fiscal year 2003. Even more disturbing is that the Environmental Protection Agency (EPA) projected 65 construction completions for Superfund in fiscal year 2002 and, despite having received over 98 percent of the funds requested for the program, the EPA now estimates that only 40 sites will be completed in the current fiscal year. This change represents a nearly 40 percent decrease in the effectiveness of this program only four months into the fiscal year.

Many of the sites at which cleanup is being delayed have been on the National Priorities List for 10-15 years. Instead of reducing the number of cleanups, the Administration should affirm its commitment to securing communities from the risks of hazardous waste.

Mr. Fleischer went on to discuss a perceived need for reform of the program. Unfortunately, Mr. Fleischer's remarks appear to indicate a fundamental misunderstanding of today's Superfund program. Mr. Fleischer seems unaware of the legislative changes that have been made to Superfund, including the Small Business Liability Relief and Brownfields Revitalization Act that you signed into law on January 11, 2002, and the three rounds of successful administrative reforms that were undertaken by the EPA in the 1990's. The Superfund statute has been specifically amended three times in the last eight years to address the liability concerns of banks and financial institutions (Public Law 104-208), legitimate recycling activities (Public Law 106-113), and innocent landowners, property developers, and small businesses (Public Law 107-118).

The Superfund program of today is a much more successful and effective program than that of its first decade. The Superfund program conducted a record number of cleanups in the 1990's. Despite this enormous progress in Superfund cleanups, we need to clean up the remaining sites and ensure the health and safety of our communities – to do that, we have got to find a way to pay for it.

We look forward to working with you on these issues. Thank you for your consideration.

Sincerely,



Peter A. DeFazio  
Ranking Democratic Member  
Subcommittee on Water Resources  
and Environment



James L. Oberstar  
Ranking Democratic Member

cc: The Honorable Christie Todd Whitman  
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